

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

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An Ordinance Amending Ordinance No. PL-15, Deschutes County Zoning Ordinance of 1979, As Amended, To Add Definitions, To Authorize Fill And Removal As A Conditional Use In Certain Zones, To Create Exceptions, Requiring a "Sunset" Review, Adopting Findings and Conclusions, And Declaring An Emergency. *

MARY SUE PENNOLLOW
COUNTY CLERK

VOL

72 PAGE 392

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ORDINANCE NO. 86-056

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

Section 1. Section 1.030 (136A), Winter Solar Heating Hours, Ordinance No. PL-15, Deschutes County Zoning Ordinance of 1979, as amended, is renumbered Section 1.030 (136B).

Section 2. Section 1.030, Ordinance No. PL-15, Deschutes County Zoning Ordinance of 1979, as amended, is further amended to add the following:

"(14A) Bank-full Stage. The elevation at which water overflows the natural banks of a stream, river, or lake and begins to inundate the upland. In the absence of physical evidence, the two-year reoccurrence interval flood elevation may be used to approximate bank-full stage."

"(15A) Bed or Banks of Stream or River. The physical container of the waters of a stream or river lying below bank-full stage, and the land 10 feet on either side of the container."

"(136A) Wetland. Those areas that are inundated or saturated by surface or ground water at a frequency or duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include swamps, marshes, bogs, and other similar areas."

Section 3. Article 6, Exceptions, Ordinance No. PL-15, Deschutes County Zoning Ordinance of 1979, as amended, is further amended to add the following:

"SECTION 6.060. FILL AND REMOVAL EXCEPTIONS.

- (1) The following fill and removal activities are permitted outright if the material to be filled or removed will not exceed 50 cubic yards in volume:
 - (a) Removal of vegetation for the purpose of:
 - (i) Removal of diseased or insect-infested trees or shrubs, or rotten or damaged trees that present safety hazards.
 - (ii) Normal maintenance and pruning of trees and shrubs.
- (2) The following fill and removal activities may be authorized by the Planning Director upon a finding that no adverse impacts will occur to the water resources of Deschutes County:
 - (a) Minor fill or removal required for vegetative enhancement, including excavation and preparation of the ground for planting additional vegetation.
 - (b) Fill or removal for maintenance and repair of existing bridges, dams, irrigation facilities, and similar public and semi-public facilities, provided such fill or removal does not alter the existing characteristics of the stream, river, or wetland.
 - (c) Fill or removal for maintenance and repair of nonconforming structures or boat docks."

Section 4. Section 8.050, Ordinance No. PL-15, Deschutes County Zoning Ordinance of 1979, as amended, Specific Use Standards, is further amended to add the following:

"(23) Fill and Removal.

- (A) Except as otherwise provided in this ordinance, no person shall fill or remove any material or remove any vegetation, regardless of the amount, within the bed and banks of any stream or river, or in any wetland, unless such fill or removal is approved as a

conditional use in accordance with the following standards:

- (1) An application shall be filed containing a plan with the following information:
 - (a) A detailed explanation of the planned fill or removal including the amount of material to be filled or removed.
 - (b) An explanation of why the fill or removal is necessary.
 - (c) A site plan, drawn to scale and accompanied by such drawings, sketches, and descriptions as are necessary to describe and illustrate the proposed fill or removal. The site plan shall, at a minimum, include:
 - (i) An inventory of existing vegetation.
 - (ii) The proposed modifications, if any, to the vegetation.
 - (iii) Existing and proposed site contours.
 - (iv) Location of property lines, easements, and high water marks.
 - (v) Other site elements or information which will assist in the evaluation of the proposed fill or removal.
 - (d) A letter from the Oregon Department of Fish and Wildlife stating that there will be no adverse impacts upon fish or wildlife habitats from the proposed fill or removal.
- (2) Public facility and service uses, such as construction or maintenance of roads, bridges, electric, gas, telephone, water, sewer transmission and distribution lines, and related facilities controlled by public utilities or co-

operative associations, shall not be granted conditional use permits to fill or remove unless the following findings are made:

- (a) That all necessary state and federal permits will be obtained as a condition of approval of the conditional use.
 - (b) That the roads, bridges, transmission and distribution lines, and related facilities cannot, as a practical matter, be located outside of the wetland, or bed and bank of the stream or river.
 - (c) That the construction or maintenance requiring the fill or removal will be done in a manner designed to minimize the adverse impact upon the wetland, stream, or river.
 - (d) That erosion will be adequately controlled during and after construction.
 - (e) That the impacts on fish and wildlife habitat from the fill or removal will be minimized to the greatest extent practical.
- (3) Fill or removal required for public park and recreation areas, natural and outdoor education areas, historic and scientific areas, wildlife refuges, public boat launching ramps, public docks and public walkways shall not be allowed as a conditional use unless the following findings are made:
- (a) That all necessary state and federal permits will be obtained as a condition of approval of the conditional use permit.
 - (b) That only the minimum removal of vegetation or material and dredging or excavation necessary for construction and maintenance will be done.

- (c) That the specific location of the site will require the minimum amount of disturbance to the natural environment, considering alternative locations in the area and methods of construction.
 - (d) That such construction and maintenance is designed and done in such a manner as to minimize the adverse impact on the site.
 - (e) That erosion will be adequately controlled during and after construction.
 - (f) That the impacts on fish and wildlife habitat by the fill or removal will be minimized to the greatest extent practical.
- (4) Except for uses identified in subsections (2) and (3) above, an application for a conditional use permit for activity involving fill or removal of material or vegetation within the bed and banks of a stream, river, or wetland:
- (a) Shall be granted only after consideration of the following factors:
 - (i) The effects on public or private water supplies and water quality.
 - (ii) The effects on aquatic life and habitat.
 - (iii) The effects on wildlife habitat.
 - (iv) Recreational, aesthetic, and economic values of the affected water resources.
 - (v) Effects on the hydrologic characteristics of the water body, such as direction and velocity of flow, elevation of water surface, sediment transportation capacity, stabilization of the bank, and flood hazards.

- (vi) The character of the area, considering existing stream bank, stabilization problems and fill or removal projects which have previously occurred.
- (b) Shall not be granted unless all of the following conditions are met:
 - (i) That all necessary state and federal permits will be obtained as a condition of approval of the conditional use.
 - (ii) That there is no practical alternative to the proposed project which will have less impact on the surrounding area, considering the factors established in subsection (4)(a) above.
 - (iii) That there will be no significant impacts on the surrounding area, considering the factors established in subsection (4)(a) above.
 - (iv) That erosion will be adequately controlled during and after the project.
 - (v) That vegetation will maintain the essential character, quality, and density of existing growth. Additional vegetation shall be required if necessary to protect aquatic life habitats, functions of the ecosystem, wildlife values, erosion, and aesthetic resources.
 - (vi) That the proposed fill or removal activity will be consistent with all relevant goals and policies of the Deschutes County Comprehensive Plan.
 - (vii) That a conservation easement, as defined in Section 1.030 (25B) of this Ordinance, shall be conveyed to the County, which provides, at a minimum, that

all elements of the project will be carried out and maintained as approved, in perpetuity, for the regulated fill or removal area and all real property on the same lot, within 10 feet of any wetland, river or stream."

Section 5. The Board of County Commissioners of Deschutes County adopts as its findings and conclusions supporting the amendments in Sections 1 through 4 of this Ordinance the Staff Report, dated May 21, 1986, relating to the Deschutes River Corridor.

Section 6. Not later than one year after passage of this Ordinance, the Deschutes County Planning Director shall report to the Deschutes County Board of County Commissioners regarding the implementation and effect of this Ordinance. Not later than two years after passage of this Ordinance, the Board of County Commissioners shall review this Ordinance, hold a public hearing and determine whether a public need exists to continue the Ordinance.

Section 7. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on its passage.

DATED this 30th day of June, 1986.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

Lois Bristow Prante
LOIS BRISTOW PRANTE, Chair

ATTEST:

Susan Stone
Recording Secretary

Laurence A. Tuttle
LAURENCE A. TUTTLE, Commissioner

Dick Maublin
DICK MAUBLIN, Commissioner